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7 || Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Denny's, Inc., a California corporation;  
DFO, LLC, a Delaware limited liability  
company,

NO. 2:09 CV 00741-SRB

Plaintiff.

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Kennedy Restaurants, L.L.C., an Arizona limited liability company; Sandra D. Kennedy and John Doe Kennedy, husband and wife; M.C. Burton, Jr., and Jane Doe Burton, husband and wife,

Defendants.

Kennedy Restaurants, L.L.C., an Arizona limited liability company; Sandra D. Kennedy and M.C. Burton, Jr.,

## Counterclaimants.

VS.

Denny's Inc., a California corporation;  
DFO, LLC, a Delaware limited liability  
company.

## Counterdefendants.

1           Pursuant to this Court's January 7, 2010 Order, Defendants Kennedy Restaurants,  
2 L.L.C., Sandra D. Kennedy and M.C. Burton Jr., by and through undersigned counsel,  
3 hereby respond to Plaintiffs' Motion to Expedite.

4           The Motion to Expedite provides no compelling reason to adjust the briefing  
5 schedule for the pending Motion for Summary Judgment – the response to which would  
6 ordinarily be due on February 8, 2010. Fed. R. Civ. P. 6(e), 56(c)(1), LRCiv. 56.1(d).  
7 Having failed twice to obtain provisional relief, plaintiffs now make an improper attempt  
8 to get an "instant" remedy without any justifiable basis, and to put undue pressure on  
9 defendants.

10          Plaintiffs essentially contend that they are entitled to expedited briefing because (a)  
11 they are certain that they will win on summary judgment and want to bring this case to a  
12 rapid conclusion, and (b) their records show that Defendants have failed to make  
13 payments in accordance with the Agreements at issue in this case.

14          These reasons are unpersuasive. If plaintiffs are so confident they will win, and if  
15 they wanted such an order sooner rather than later, they should have moved for summary  
16 judgment prior to January 5. If plaintiffs' records indeed establish that defendants have  
17 been in default for the past 12 weeks [Motion at 3], it is inexplicable why Plaintiffs waited  
18 so long to bring the alleged delinquency to anyone's attention.

19          Defendants take the allegations in the Motion for Summary Judgment seriously.  
20 Defendants have never believed that the Court's denial of plaintiffs' request for a TRO  
21 and plaintiffs' request for a preliminary injunction entitled them to a "free ride" until this  
22 case is resolved. [*Cf.* Motion at 3] Defendants are in the process of gathering  
23 documentation regarding recent payments. Defendants are fully prepared to respond to  
24 the Motion for Summary Judgment in the time provided under the Rules.

25          Based upon the foregoing, defendants respectfully request that the Motion to  
26 Expedite be denied.

**RESPECTFULLY SUBMITTED** this 11th day of January, 2010.

**MARISCAL, WEEKS, MCINTYRE  
& FRIEDLANDER, P.A.**

By: s/ Tricia Schafer

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## **CERTIFICATE OF SERVICE**

I hereby certify that on this 11th day of January, 2010 I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing, with a transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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